

Before the  
Administrative Hearing Commission  
State of Missouri



|                          |   |                |
|--------------------------|---|----------------|
| SAMANTHA MINOR,          | ) |                |
|                          | ) |                |
| Petitioner,              | ) |                |
|                          | ) |                |
| vs.                      | ) | No. 13-1570 DH |
|                          | ) |                |
| DEPARTMENT OF HEALTH AND | ) |                |
| SENIOR SERVICES,         | ) |                |
|                          | ) |                |
| Respondent.              | ) |                |

**DECISION**

Samantha Minor lacks standing to bring this action, and we therefore dismiss.

**Procedure**

Samantha Minor filed her complaint on August 30, 2013. The Missouri Department of Health and Senior Services filed a motion to dismiss for lack of jurisdiction on September 12, 2013. We granted Ms. Minor until October 3, 2013 to file a response, but she filed nothing.

We may grant a motion for involuntary dismissal, or dismiss a complaint on our own motion, based on a preponderance of admissible evidence. 1 CSR 15-3.436(1) and (3).<sup>1</sup> Admissible evidence includes allegations made in the complaint. 1 CSR 15-3.436(3). For

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<sup>1</sup> References to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

purposes of deciding whether dismissal is appropriate in the instant case, we assume all facts alleged in the complaint are true.

### **Findings of Fact**

1. The Department of Health and Senior Services denied Samantha Minor's application for licensure as a child care provider.
2. Ms. Minor appealed to this Commission on August 30, 2013.

### **Conclusions of Law**

Ms. Minor seeks this Commission's review of the Department's decision to deny her a child care license. The Department moved to dismiss because the statutory procedure for such review requires and permits only the Department to file for such review. We agree.

This Commission is a creature of statute and can exercise only those powers conferred by law, not expand them. *Livingston Manor, Inc. v. Dep't of Soc. Servs., Div. of Family Servs.*, 809 S.W.2d 153, 156 (Mo. App. W.D. 1991).

The Department licenses child-care facilities, may deny applications for licensure, and may impose discipline against licenses. § 210.211.1, RSMo,<sup>2</sup> and § 210.221.1(1) and (2), RSMo (2000). As relevant here, the law provides a specific review process for cases in which the Department decides to deny an application for licensure:

If the department of health and senior services proposes to deny ... a license, the department of health and senior services shall serve upon the applicant ... written notice of the proposed action to be taken. The notice shall contain a statement of the type of action proposed, the basis for it, the date the action will become effective, and a statement that the applicant or licensee shall have thirty days to request in writing a hearing before the administrative hearing commission and that such request shall be made to the department of health and senior services. ... If the applicant or licensee makes a written request for a hearing, the department of health and senior

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<sup>2</sup> All statutory references are to the 2012 Cumulative Supplement to the Missouri Revised Statutes unless otherwise noted.

services shall file a complaint with the administrative hearing commission within ninety days of receipt of the request for a hearing. [Emphasis added.]

§ 210.245.2, RSMo. The Commission then reviews the denial. § 621.045, RSMo.

But Ms. Minor lacks standing to herself seek review by this Commission. Standing, in its most basic form, “asks whether the persons seeking relief have a right to do so.” *In re Ancillary Adversary Proceeding Questions*, 89 S.W.3d 460, 464 (Mo. banc 2002). Ms. Minor has no such right. Under § 210.245.2, this Commission may decide whether denial of licensure is appropriate, but only upon the filing of a complaint by the Department. The law provides this Commission no authority to review a denial when the applicant files with us directly. Therefore, we must dismiss.

### **Conclusion**

We dismiss because Ms. Minor lacks standing.

The hearing presently scheduled for November 12, 2013 is canceled.

SO ORDERED on October 8, 2013.

\s\ Alana M. Barragán-Scott  
ALANA M. BARRAGÁN-SCOTT  
Commissioner